

1 19A NCAC 02E. 0604 is proposed for amendment as follows:

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3 **19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR**
4 **FACILITIES OR PERMIT REQUIREMENTS**

5 ~~(a) Selected vegetation within the approved limits shall be thinned, pruned, or removed by the Permittee or his~~
6 ~~agent in accordance with accepted horticultural practices recommended by North Carolina State University.~~
7 ~~Roadside environmental personnel shall identify specific trees, shrubs, and other vegetation which may be pruned,~~
8 ~~thinned, or removed.~~

9 ~~(b) The Permittee may be required to furnish a performance bond or check in an amount determined by the Division~~
10 ~~Engineer to run concurrently with the permit, as deemed necessary to restore the right of way to the original~~
11 ~~condition if damage occurs.~~

12 ~~(c) A Division of Highways Roadside Inspector shall be present while work is underway.~~

13 ~~(d) Permits may be issued for multiple sites; however, a permit must be secured prior to performing any vegetation~~
14 ~~control work. Routine maintenance by the Permittee or his agent shall not be permitted.~~

15 ~~(e) The Permittee or his agent shall not impede traffic on the highway in performing the work. Access to the work~~
16 ~~site on controlled access highways must be gained without using the main travelway of the highway. The Division~~
17 ~~Engineer shall determine traffic control signing which may be required. The Permittee shall furnish, erect and~~
18 ~~maintain the required signs as directed by the Division Engineer.~~

19 ~~(f) Any damage to vegetation which is to remain, to highway fences, signs, paved areas, or other facilities shall be~~
20 ~~repaired or replaced by the Permittee to the satisfaction of the Division Engineer. All trimmings, laps, and debris~~
21 ~~shall be removed from the right of way and disposed of in areas provided by the Permittee. No burning or burying~~
22 ~~shall be permitted on the highway right of way. When chipping is used to dispose of trimmings, chips may be neatly~~
23 ~~spread on right of way at locations which the Division Engineer determines will not be harmful to the environment~~
24 ~~or traffic safety.~~

25 ~~(g) Upon satisfactory completion of all work, the Roadside Inspector shall notify the Division Engineer who shall~~
26 ~~notify the Permittee in writing of such acceptance, terminate the permit, and return the performance bond or check.~~

27 ~~(h) Failure to comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall~~
28 ~~result in immediate revocation of the permit and forfeiture of any or all of the performance bond or check as~~
29 ~~determined by the Division Engineer based on conditions stated in Paragraph (b) of this Rule.~~

30 The following apply to the conditions of selective vegetation removal permit for facilities or permit requirements:

31 (1) Selected vegetation, within the approved limits may be cut, thinned, pruned or removed by the
32 permittee in accordance with the standards set out in G.S. 136-133.4.

33 (2) The permittee shall indemnify and hold harmless the North Carolina Department of
34 Transportation, its employees, attorneys, agents, and contractors against any and all claims or
35 causes of action, and all losses therefrom, arising out of or in any way related to permittee's
36 operation.

- (3) The permittee shall furnish a Performance and Indemnity Bond or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The bond, certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The bond or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by NCDOT reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent.
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and this type of bond shall be kept on file by the Department.
- (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity must furnish the required bonding as described in this Section, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department. Bonds are to be furnished with the Selective Vegetation Removal application form to the appropriate official assigned to receive selective vegetation removal applications at the local NCDOT Division of Highways Office.
- (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor or agent, shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his contractor and agent, are liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees.. The permittee may, in lieu of providing proof of liability insurance as described in this paragraph, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy.
- (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality. The document shall be a current

- geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the business facility. The permittee shall also provide the property tax identification number for the parcel on which the facility is located. The Department may require additional information if the boundary or facility location remains in question.
- (8) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit.
- (9) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the permitted cutting distances according to 19A NCAC 02E .0602(d). The two maximum points along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. The two maximum points, corresponding to the actual beginning point and the actual ending point, along the edge of the pavement of the travel way, perpendicular to the maximum points marked along the right-of-way boundary, shall be marked with spray paint. If the facility is located next to an acceleration or deceleration ramp, the two corresponding maximum points shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway.
- (10) The permittee shall tag, with visible material or flagging, those trees with a diameter of four caliper inches and larger, as measured six inches above ground level, at the time of the application that are requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone. Trees tagged for cutting, thinning, pruning, or removal shall match with the trees shown on the required sketch of the requested vegetation cut or removal zone.
- (11) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected trees of four caliper inches or greater in diameter, as measured six inches above ground level, which are not screening the facility from view from the roadway. The Department will make this determination by allowing selective thinning of tree density which opens the view to the facility across the entire length of the maximum cut or removal zone, without complete removal of all trees and other vegetation. The Department shall disapprove cutting, thinning, pruning, or removal of dogwood and redbud trees that may have been tagged in error. If trees are disapproved for cutting, thinning, pruning or removal, the Department shall specify those trees to the applicant during the site investigation. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department by electronic means an amended version of the original sketch of the site by indicating the changes on the sketch and initialing and dating the changes thereon. Failure to amend the sketch of the site according to this rule shall be considered failure to provide required documentation.
- (12) If any conservation easements or State or Federal rules, statutes or permits restrict an applicant from cutting, thinning, pruning or removing any vegetation from any portion but less than the

1 entirety of the maximum vegetation cutting or removal zone, the permittee shall comply with
2 applicable rules, statutes or permits for those portions of vegetation. If applicable easements, State
3 or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning,
4 pruning, or removal for portions of vegetation, the permittee shall comply with State or Federal
5 rules, statutes, or permits including equipment type for those portions of vegetation, including
6 conservation easements. Portions of the maximum cutting or removal zone not within a
7 conservation easement nor regulated by State or Federal environmental rules, statutes or permits
8 regulating vegetation removal and other activities shall be governed by standards set out in G.S.
9 136-93.

10 (13) The permittee must adhere to erosion control requirements, according to North Carolina General
11 Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973.

12 (14) A Division of Highways Inspector may be present while work is underway. The presence or
13 absence of a Division of Highways inspector at the work site does not lessen the permittee's
14 responsibility for conformity with the requirements of the permit and all applicable General
15 Statutes and rules. Should the inspector fail to point out work that does not conform with the
16 requirements, it does not prevent later notification to the permittee that the work is not in
17 compliance with the permit.

18 (15) A selective vegetation removal permit must be secured for each applicable facility site prior to
19 performing any vegetation removal work. The Permittee or its contractor or agent must have a
20 copy of the Selective Vegetation Removal Permit on the work site at all times during any phase of
21 selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations.

22 (16) Should the Division Engineer ("Engineer") or his representative observe unsafe operations,
23 activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions
24 or activities have been eliminated or corrected. Failure to comply with any of the requirements for
25 safety and traffic control of this permit shall result in suspension of work.

26 (17) The permittee or its contractor or agent shall take appropriate measures to locate and protect
27 utilities within the highway right-of-way within the work area of the selective vegetation removal
28 zone. The permittee shall be responsible for restoration of any losses or damages to utilities
29 caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility
30 owner.

31 (18) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove
32 vegetation more than one time during the permit year. If the applicant applies for and is approved
33 for another permit during an existing permit year, the previous permit shall become null and void
34 at the same time the new permit is issued.

35 (19) The permittee shall provide to the appropriate Department official a 48-hour notification before
36 entering the right-of-way for any work covered by the conditions of the permit. The permittee
37 shall schedule all work with the appropriate Department official. The permittee shall notify the

- Department in advance of work scheduled for nights, weekends, and holidays. The Department reserves the right to modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal.
- (20) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department (if the Department's employees are performing the work). The permittee shall provide the Division Engineer with a copy of the written permission.
- (21) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools.
- (22) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) and access from the private property side to the right-of-way. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with International Society of Arboriculture standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications for the Department.
- (23) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department.
- (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance at the end of each workday.
- (25) An applicant for a selective vegetation removal permit for a facility issued pursuant to 19A NCAC 02E .0602 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section. Such an appeal shall be in accordance with the provisions of G.S. 136-133.3.
- (26) Upon completion of all work, the Department shall notify the Division Engineer who shall notify the Permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity Bond or certified or cashier's check to the permittee.
- (27) Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.

1 *History Note:* *Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*
2 *Authority G.S. 136-18(5); 136-18(7); 136-18(9);*
3 *Eff. June 1, 1982;*
4 *Amended Eff. August 1, 2000; November 1, 1991; August 1, 1985; August 1, 1982; June 2, ~~1982~~ 1982; November 1,*
5 *2012.*